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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,729	08/25/2003	William T. Dalebout	13914.880	8150
7590	04/18/2006			EXAMINER MATHEW, FENN C
Ryan D. Benson WORKMAN, NYDEGGER & SEELEY 1000 Eagle Gate Tower 60 East South Temple Salt Lake City, UT 84111			ART UNIT 3764	PAPER NUMBER
DATE MAILED: 04/18/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/647,729	DALEBOUT ET AL.	
	Examiner Fenn C. Mathew	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 January 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-32,35-38 and 40-62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 32,35-37,40-43 and 45-62 is/are allowed.
- 6) Claim(s) 1-9,11-20,38 and 44 is/are rejected.
- 7) Claim(s) 10 and 21-31 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                                               |                                                                             |
|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                          | Paper No(s)/Mail Date. _____                                                |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>01/24/06</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|                                                                                                                                               | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-4 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Stevens (U.S. 5,022,377). Stevens teaches a support frame (16), a single resilient rod linked to the support frame configured to provide resistance, a variable resistance system (22) linked to the single resilient elongate rod configured to vary a mechanical advantage (as bend increases so does resistance). Stevens further teaches the support frame comprising an upright support member coupled to the resilient elongated rod. Stevens teaches the resilient rod having a first end a second end, and a center portion wherein each of the three portions move.
3. Claims 1, 5-9, and 11-19, 38 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Andrews (U.S. 6,082,346). Please refer to paragraph 3 of the previous office action. Note that claims 38 and 44 are substantially similar in scope to the claims listed above.

### ***Allowable Subject Matter***

4. The indicated allowability of claim 38 is withdrawn in view of the newly applied reference(s) to Andrews. Rejections based on the reference(s) are noted above, specifically noting that the scope of claim 38 is substantially similar in scope to claim 11.

***Response to Arguments***

5. Applicant's arguments with respect to claims 1-4 and 20 have been considered but are moot in view of the new ground(s) of rejection. Applicant's arguments with respect to the Andrews reference are not persuasive. Andrews device forms a single resilient entity, therefore in the broadest reasonable interpretation, Andrews meets the limitations of claim 1. With respect to claim 11, Applicant does not require a direct connection between the intermediate portion and the support frame. Applicant has attempted to maintain extremely broad claim limitations, thus Examiner is forced to examine in the broadest reasonable light. Applicant is reminded that the prior art of record reads on claim limitations so long as the structural limitations are met, and the prior art is capable of meeting functional recitations.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C. Mathew whose telephone number is (571) 272-4978. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3764

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JCM  
fcm  
April 17, 2006

JEROME DONNELLY  
PRIMARY EXAMINER

